wholly in private and by individuals, the argument as to the untrustworthy nature of parol evidence fails. Again, there are not the safeguards against fraud and mistake which the very number of the legislature affords, while the chances of mishandling are greatly increased. Hence it is submitted that the public policy in favor of stability is overborne by the desirability of making it possible to remedy a negligent or fraudulent thwarting of the legislative will by individuals beyond the supervision of that body. Still the weight of authority supports the principal case. *Weeks* v. *Smith*, 81 Me. 538, 18 Atl. 325. See *People* v. *McCullough*, 210 Ill. 488, 510, 71 N. E. 602, 609.

EVIDENCE — TESTIMONY GIVEN AT FORMER TRIAL — ADMISSIBILITY AFTER MARRIAGE OF WITNESS WITH DEFENDANT. — In a trial for manslaughter, the former testimony of a woman who since the first trial had been disqualified by marriage with the defendant, was excluded. *Held*, that the exclusion was correct. *Langham* v. *State*, 68 So. 504 (Ala.)

As a general rule, former testimony is admissible as an exception to the Hearsay Rule when it has become unfeasibl e to secure the presence in court of the witness. *People* v. *Elliott*, 172 N. Y. 146, 64 N. E. 837; *State* v. *Wheat*, 111 La. 860, 35 So. 955; *United States* v. *Reynolds*, 1 Utah 319, 98 U. S. 145. The principle of this exception would make former testimony admissible in all cases where the witness, although capable of attendance in court, has been rendered incompetent, unless the incompetence were of such a nature as to cast suspicion upon the former testimony, *e. g.*, conviction for an infamous crime. See 2 WIGMORE, EVIDENCE, § 1402. *Cf. Le Baron* v. *Crombie*, 14 Mass. 233. As yet, the principle has only been applied when the incompetence is for interest or mental incapacity. *Wafer* v. *Hemken*, 9 Rob. (La.) 203. See *Walkup* v. *Commonwealth*, 14 Ky. L. R. 337, 338, 20 S. W. 221, 222. See 2 WIGMORE, EVIDENCE, §§ 1408, 1409. *Cf. Gold* v. *Eddy*, 1 Mass. 1. Nevertheless, where the absence or incompetence has been caused by the proponent, the former testimony should be excluded on account of the danger of allowing the proponent to substitute it for direct evidence. When, however, the act of the proponent is as free from the suspicion of ulterior motives as marriage, this danger seems negligible and an inadequate ground for refusing the former testimony.

INJUNCTION — ACTS ENJOINED — INTEREST OF PERSONALITY CREATED BY STATUTE — EXCLUSIVENESS OF STATUTORY REMEDY. — Plaintiff, a dramatic critic in New York City, was excluded from defendant's theaters, and threatened with future exclusion, on the ground of unfair criticism. A New York statute provides that all persons are entitled to equal accommodations in theaters and other places of amusement, and makes discrimination by theater managers a misdemeanor, further providing that a party aggrieved may have a civil action to recover a penalty. Plaintiff asked that defendant be enjoined from violating this statute. *Held*, that an injunction will not be granted. *Woollcott* v. *Shubert*, 154 N. Y. Supp. 643.

For a discussion of this case, see NOTES, p. 93.

INSURANCE — RE-INSURANCE — LIABILITY OF RE-INSURER WHEN INSURER COMPROMISES. — The plaintiff, the insurer of a ship, re-insured the risk with the defendant. After loss, the plaintiff compromised with the shipowner for less than the insured value of the ship. He now sues the defendant for the full amount of the re-insurance policy. *Held*, that he can recover only the actual amount paid by him to the insured. *British, etc. Ins. Co.* v. *Duder*, 31 T. L. R. 361.

It is generally held that the re-insured can recover before any payment has been made to the insured, and that then subsequent events cannot alter his liability. *Hone* v. *Mutual, etc. Ins. Co.*, 1 Sandf. (N. Y.) 137. In the light of this, courts have generally said that re-insurance is indemnity against the

liability as distinct from the loss of the re-insured, and have allowed a recovery by the re-insured of an amount in excess of that paid by him to the insured. *Allemania Ins. Co.* v. *Fireman's Ins. Co.*, 209 U. S. 326, 332. See *British, etc. Ins. Co.* v. *Duder*, [1914] 3 K. B. 835, 839 (overruled by the principal case). This result is almost universally adopted in case the re-insured becomes insolvent. See 28 HARV. L. REV. 302. Many courts and writers, reasoning from these cases, support a recovery in excess of indemnity paid when the re-insured is solvent. *Eagle Ins. Co.* v. *Lafayette Ins. Co.*, 9 Ind. 443; *Cass County* v. *Mercantile, etc. Ins. Co.*, 188 Mo. 1; *Grant* v. *American Central Ins. Co.*, 68 Mo. 503. See ARNOULD, MARINE INSURANCE, 9 ed., 323. Such a result enables the re-insured to make a profit, an idea abhorrent to the fundamental conception of insurance law that the contract is one of indemnity only, and in this respect re-insurance is the same as primitive insurance. See PORTER, INSURANCE, 3 ed., 259; ARNOULD, MARINE INSURANCE, 9 ed., 323. Nor is there, as in the case of insolvency, any danger of a multiplicity of suits. See 28 HARV. L. REV. 302; 15 *id.* 866; *Philadelphia, etc. Ins. Co.* v. *Fame Ins. Co.*, 9 Phila. 292. But even the courts which have adopted the result of the principal case have failed to observe the distinction created by insolvency and have apparently believed that the result was contrary to the great weight of authority. *Illinois, etc. Ins. Co.* v. *Andes Ins. Co.*, 67 Ill. 362; *Ins. Co.* v. *Ins. Co.*, 38 Oh. St. 11; *Delaware Ins. Co.* v. *Quaker City Ins. Co.*, 3 Grant (Pa.) 71.

JUDGES — DISQUALIFICATION — PECUNIARY INTEREST — SUBORDINATION OF THE RULE TO NECESSITY. — A judge of a state Supreme Court brings a writ in that court for a *mandamus* to compel the state auditor to issue a warrant for fifty dollars in pursuance of a state statute providing that where a judge of the Supreme Court changed his residence to the state capital, he should be paid fifty dollars per month additional, in consideration of increased expenses. The auditor objected that, as the judges of the Supreme Court were pecuniarily interested, they were disqualified from participating in the proceedings. *Held*, that the court had power to grant the writ. *McCoy* v. *Handlin*, 153 N. W. 361 (S. D.).

The power and efficiency of any judicial system depend upon its freedom from all suspicion of bias or partisanship. Thus in general a vested pecuniary interest disqualifies a judge from sitting on a case. *Dimes* v. *Grand Junction Canal*, 3 H. L. Cas. 759; *Ex parte Cornwell*, 144 Ala. 497, 39 So. 354; *City of Grafton* v. *Holt*, 58 W. Va. 182, 52 S. E. 21. But as a strong public policy demands that every cause should have a trial, when the interested judge alone has jurisdiction to try the case, if his pecuniary interest is slight it is clear that he may sit. *Matter of Ryers*, 72 N. Y. 1; *Hill* v. *Wells*, 6 Pick. (Mass.) 104; *Commonwealth* v. *Emery*, 11 Cush. (Mass.) 406. Even where the interest is large, if indirect it has been held that a judge may participate in the proceedings. *State* v. *Polley*, 34 S. D. 565, 138 N. W. 300. But where the interest is large and direct, there is no settled authority. Where the exclusive jurisdiction is given by the constitution, it is difficult to refuse jurisdiction. See *Matter of Leefe*, 2 Barb. (N. Y.) 39, 40. But even if the exclusive jurisdiction is solely the result of statute, it is submitted that the character and extent of the interest should not affect the rule. In the conflict of policies which this situation involves, the considerations in favor of having someone to hear every cause outweigh in all cases the considerations against allowing an interested judge to act.

JURISPRUDENCE — REVERSAL OF JUDICIAL DECISION — CRIMINAL LIABILITY FOR ACT DECLARED INNOCENT BY DECISION SUBSEQUENTLY OVERRULED. — The defendant as officer of a bank received a deposit, having good reason to believe the bank insolvent. The highest court of the state had previously held that such an act did not fall within a criminal statute. The court